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Citation	Rank (R)	Page(P)	Database	Mode
904 F.2d 677	R 2 of 3	P 1 of 39	CTA	PAGE
14 U.S.P.Q.2d 1942				
(CITE AS: 904 F.2D 677)				

WILSON SPORTING GOODS CO., Plaintiff-Appellee,  
v.

DAVID GEOFFREY & ASSOCIATES d/b/a Slazenger, and Dunlop Slazenger Corporation  
aka Dunlop Sports Corporation, Defendants-Appellants.

Nos. 89-1554, 89-1555.

United States Court of Appeals,  
Federal Circuit.

May 23, 1990.

Rehearing Denied July 5, 1990.

Suggestion for Rehearing In Banc

Declined July 27, 1990.

In actions alleging infringement of patent claim for certain configuration of dimples on a golf ball cover, the United States District Court for the District of South Carolina, William M. Catoe, Jr., United States Magistrate, found the patents valid and infringed, and entered judgments accordingly. Appeals were taken and colosidated. The Court of Appeals, Rich, Circuit Judge, held that: (1) alleged infringer's motion for JNOV on infringement was timely and supported by its motion for directed verdict, and (2) claims were not infringed under doctrine of equivalents.

**Figure 1a**

Copr. (C) West 1995 No claim to orig. U.S. govt. works  
904 F.2d 677 FOUND DOCUMENT P 25 OF 39 CTA PAGE  
(CITE AS 904 F.2d 677, \*682)

F.2d 1546, 1550-52 & n. 8, 10 U.S.P.Q.2d 1201, 1206-07 & n. 8  
(Fed.Cir.1989) (JNOV on infringement).

[1] We are persuaded by the Notes of the Advisory Committee on the 1963 Amendments to the Federal Rules of Civil Procedure and by comparison of Rule 50 with Rules 52 and 59. The Advisory Committee Notes to Rule 50 state that the time limit for Rule 50(b) is consistent with that set forth in Rule 59(b) for moving for a new trial and in Rule 52(b) for moving to amend findings by the district court. Rule 59(b) explicitly states that a motion for new trial "shall be served not later than ten days after entry of the judgment" (our emphasis). Similarly, the Sixth Circuit has held that a Rule 52(b) motion, which contains language very similar to Rule 50(b), is timely if served on the tenth day after judgment and filed on the eleventh day. *Keohane v. Swarco, Inc.*, 320 F.2d 429, 432 (6th Cir. 1963).

In *Keohane*, the Sixth Circuit did not consider the Advisory Committee Notes, but relied on Rule 5(d) which states:

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

The court concluded that "there would not be much reason to have Rule 5(d) if the papers had to be both served and filed within the 10 day period." *Id.* at

**Figure 1b**

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SHEPARD'S (Rank 1 of 2)

CITATIONS TO: 904 F.2d 677

CITATOR: FEDERAL REPORTER CITATIONS

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No.	-----Analysis-----	-----Citation-----	Headnote No.
1	Shep Same Text	( 14 U.S.P.Q.2d 1942)	
2		US Cert Den	
3		in 498 U.S. 992	
4		in 111 S.Ct. 537	
5		112 L.Ed.2d at 547	
6		124 L.Ed.2d 1, 11	
7		113 S.Ct. 1967, 1972	
8		133 F.R.D. 296, 298	
9		140 F.R.D. 113, 118	
		140 F.R.D. 121, 127	

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**Figure 1c**

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CITATOR: FEDERAL REPORTER CITATIONS

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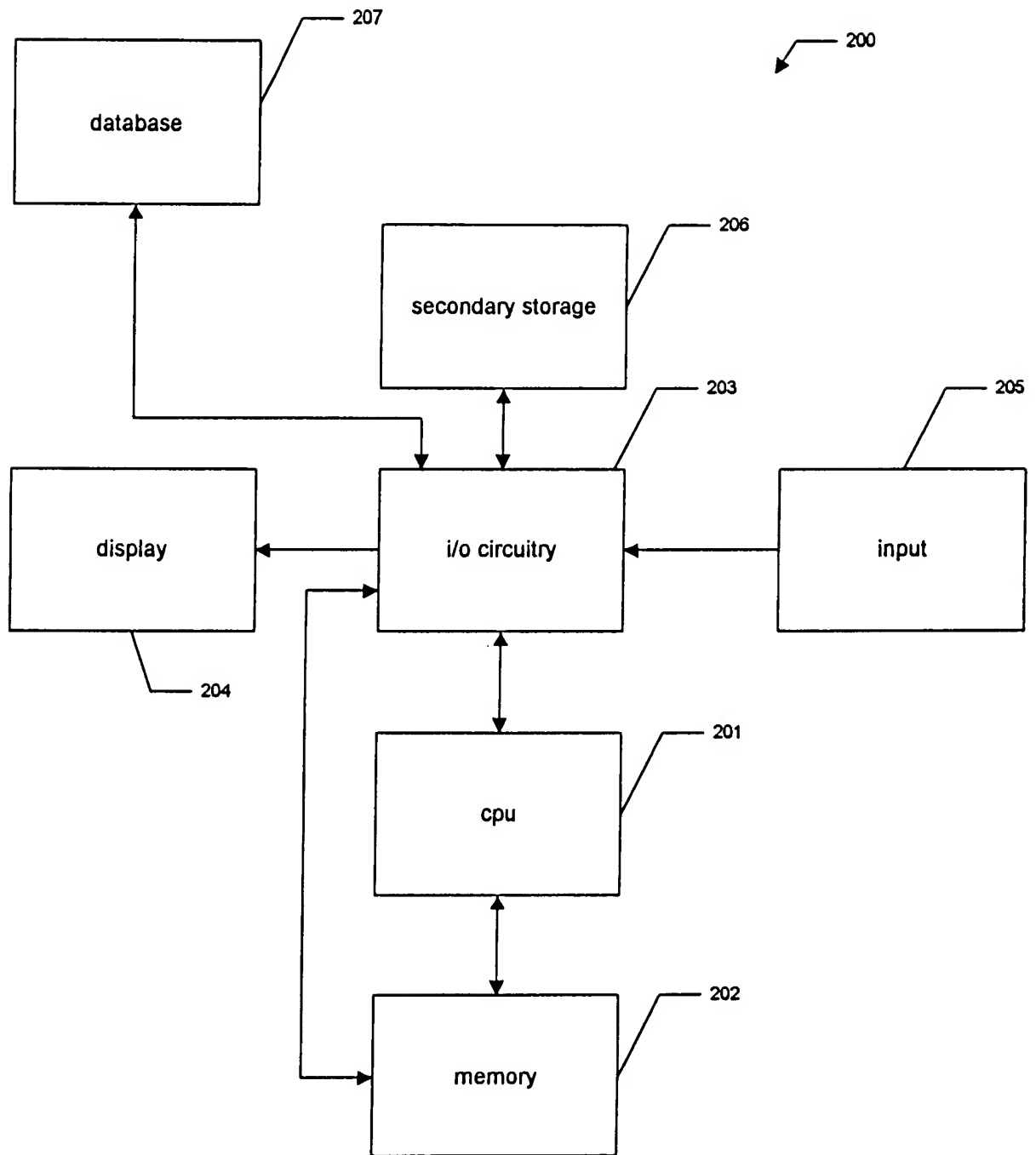
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No.	-----Analysis-----	-----Citation-----	Headnote No.
1		140 F.R.D. 121, 127	10
2		140 F.R.D. 121, 127	11
3		146 F.R.D. 353, 378	
		Cir. DC	
4		778 F.Supp. 544, 553	6
		Cir. 1	
5		737 F.Supp. 1227, 1238	6
6		737 F.Supp. 1227, 1238	7
7	F Followed	796 F.Supp. 640, 646	
		Cir. 2	
8	122	992 F.2d 12, 15	

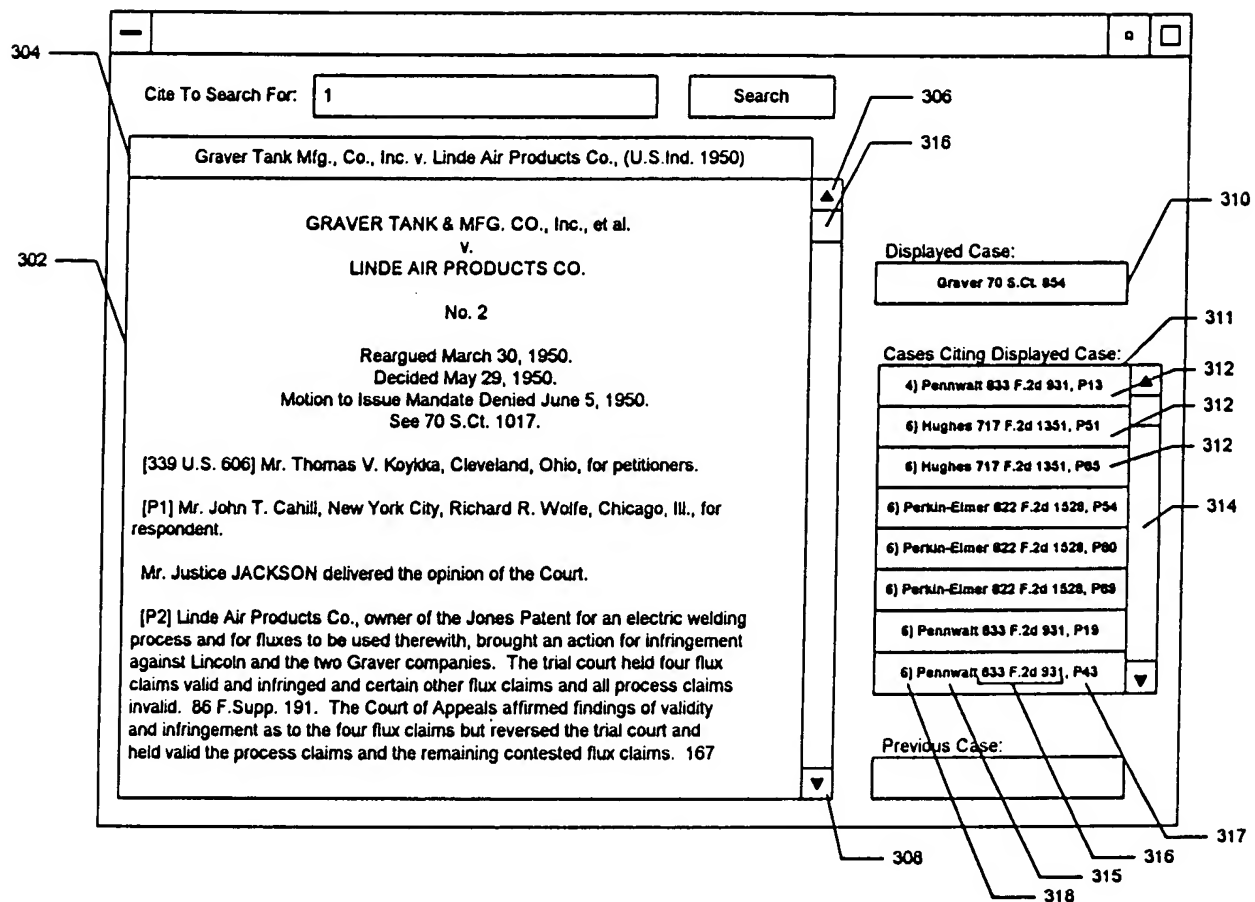
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**Figure 1d**



**Figure 2**



**Figure 3a**

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Cite To Search For:

Search

Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

[P2] Linde Air Products Co., owner of the Jones patent for an electric welding process and for fluxes to be used therewith, brought an action for infringement against Lincoln and the two Graver companies. The trial court held four flux claims valid and infringed and certain other flux claims and all process claims invalid. 86 F.Supp. 191. The Court of Appeals affirmed findings of validity and infringement as to the four flux claims but reversed the trial court and held valid the process claims and the remaining contested flux claims. 167 F.2d 531. We granted certiorari, 335 U.S. 810, 69 S.Ct. 50, 93 L.Ed. 366, and reversed the judgment of the Court of Appeals insofar as it reversed that of the trial court, and reinstated the District Court decree. 336 U.S. 271, 69 S.Ct. 535, 93 L.Ed. 672. Rehearing was granted, limited to the question of infringement of the four valid flux claims and to the applicability of the doctrine of equivalents to findings of fact in this case. 337 U.S. 910, 69 S.Ct. 1046, 93 L.Ed. 1722.

[P3] [339 U.S. 607] At the outset it should be noted that the single issue before us is whether the trial court's holding that the four flux claims have been infringed will be sustained. Any issues as to the validity of these claims was unanimously determined by the previous decision in this Court and attack on their validity cannot be renewed now by reason of limitation on grant of rehearing. The disclosure, the claims, and the prior art have been adequately described in our former opinion and in the opinions of the courts below.

[P4] In determining whether an accused device or composition infringes a valid

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Cases Citing Displayed Case:

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4) Pennwalt 833 F.2d 931, P13

6) Hughes 717 F.2d 1351, P51

6) Hughes 717 F.2d 1351, P85

6) Perkin-Elmer 822 F.2d 1528, P54

6) Perkin-Elmer 822 F.2d 1528, P80

6) Perkin-Elmer 822 F.2d 1528, P89

6) Pennwalt 833 F.2d 931, P18

6) Pennwalt 833 F.2d 931, P43

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**Figure 3b**

Cite To Search For:

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Search

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Pennwalt Corp. v. Durand-Wayland, Inc., (C.A. Fed. (Ga.) 1987)

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PENNWALT CORPORATION, Appellant/Cross-Appellee,

v.

DURAND-WAYLAND, INC., Appellee/Cross-Appellant.

Appeal Nos. 85-1882, 85-1933.

United States Court of Appeals,

Federal Circuit.

Nov. 6, 1987

[P1] Manufacturer brought action against another manufacturer alleging infringement of fruit sorter patent. The United States District Court for the Northern District of Georgia, G. Ernest Tidwell, J., found that accused device did not infringe any claim, literally or under doctrine of equivalents. Appeal and cross appeal were taken. The Court of Appeals, Bissell, Circuit Judge, held that: (1) there was no literal infringement, and (2) finding that fruit sorter was not infringed by defendant's invention was not clearly erroneous.

Affirmed in part and vacated in part.

[P2] Bennett, Senior Circuit Judge, filed an opinion dissenting in part in which Cowen, Senior Circuit Judge, and Edward S. Smith and Pauline Newman, Circuit Judges, joined.

Nies, Circuit Judge, filed an opinion expressing additional views.

Displayed Case:

Pennwalt 833 F.2d 83

Cases Citing Displayed Case:

19) London 846 F.2d 1534, P12

19) Wilson 904 F.2d 677, P36

Previous Case:

Graver 70 S.Ct. 854

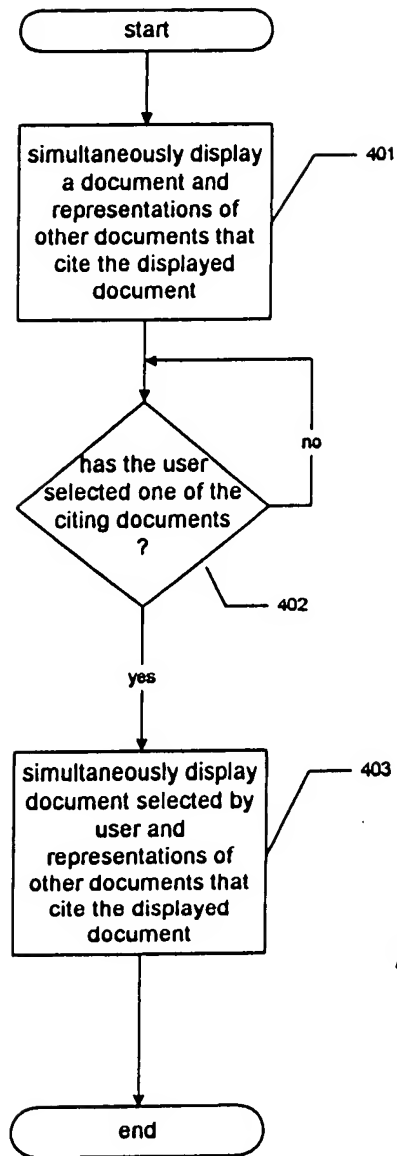
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**Figure 3c**





**Figure 4**

Cite To Search For:

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Search

Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

GRAVER TANK & MFG.CO., Inc., et al.

v.

LINDE AIR PRODUCTS CO.

No. 2

Reargued March 30, 1950.

Decided May 29, 1950.

Motion to Issue Mandate Denied June 5, 1950.

See 70 S.Ct. 1017.

[339 U.S. 606] Mr. Thomas V. Koykka, Cleveland, Ohio, for petitioners.

[P1] Mr. John T. Cahill, New York City, Richard R. Wolfe, Chicago, Ill, for respondent.

Mr. Justice JACKSON delivered the opinion of the Court.

[P2] Linde Air Products Co., owner of the Jones patent for an electric welding process and for fluxes to be used therewith, brought an action for infringement against Lincoln and the two Graver companies. The trial court held four flux claims valid and infringed and certain other flux claims and all process claims invalid. 86 F.Supp. 191. The Court of Appeals affirmed findings of validity and infringement as to the four flux claims but reversed the trial court and held valid the process claims and the remaining contested flux claims. 167

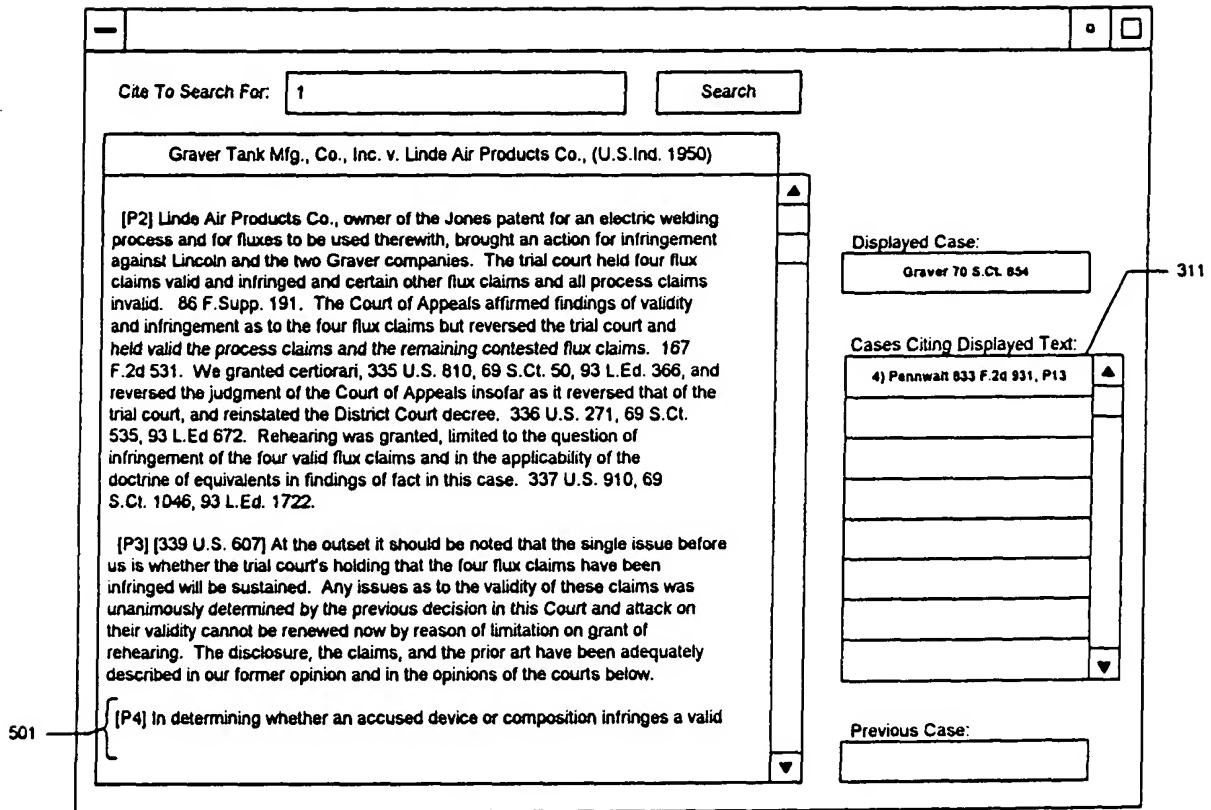
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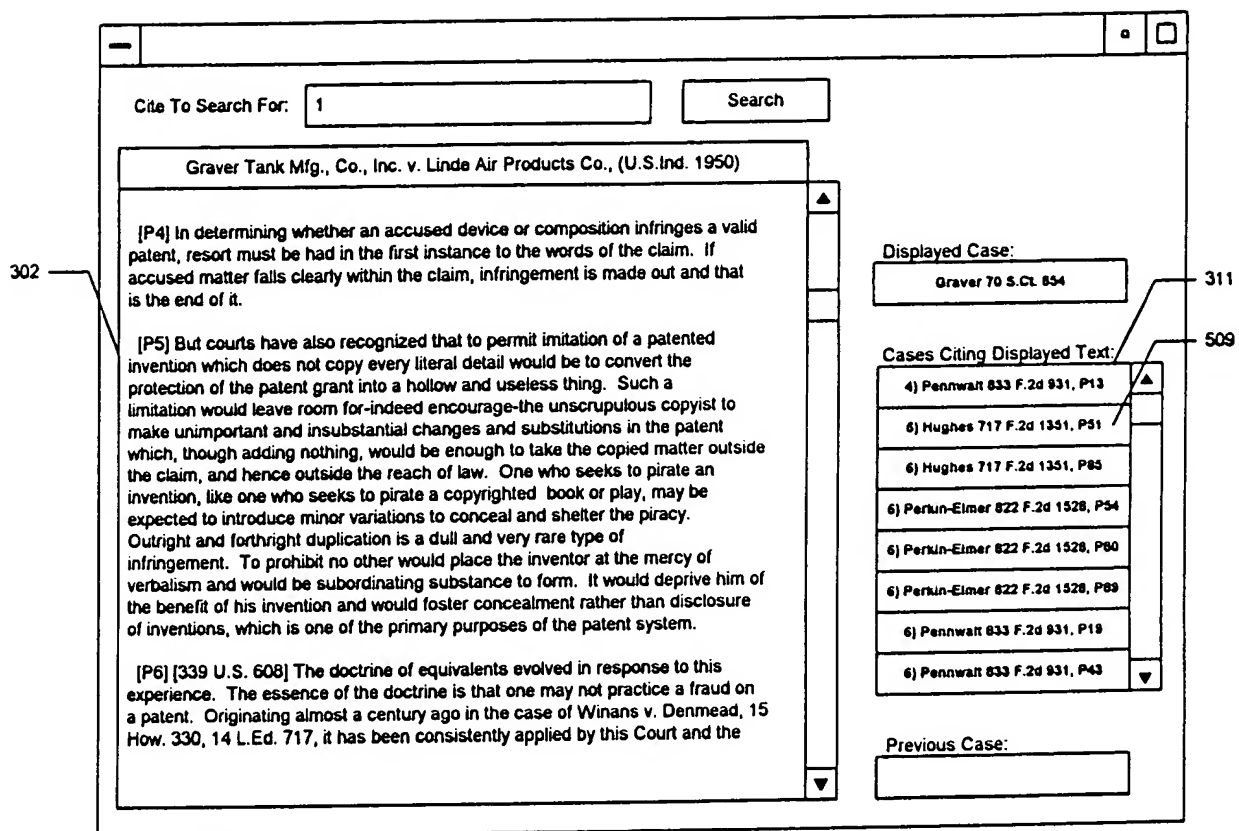
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**Figure 5a**



**Figure 5b**



**Figure 5c**

Cite To Search For:

1

Search

Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

[P6] [339 U.S. 608] The doctrine of equivalents evolved in response to this experience. The essence of the doctrine is that one may not practice a fraud on a patent. Originating almost a century ago in the case of *Winans v. Denmead*, 15 How. 330, 14 L.Ed. 717, it has been consistently applied by this Court and the lower federal courts, and continues today ready and available for utilization when the proper circumstances for its applications arises. To temper unsparing logic and prevent an infringer from stealing the benefit of the invention (FN1) a patentee may invoke this doctrine to proceed against the producer of a device 'if it performs substantially the same function in substantially the same way to obtain the same result.' *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30, 42, 50 S.Ct. 9, 13, 74 L.Ed. 147. The theory on which it is founded is that 'if two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same, even though they differ in name, form, or shape.' *Union Paper-Bag Machine Co. v. Murphy*, 97 U.S. 120, 125, 24 L.Ed. 935. The doctrine operates not only in favor of the patentee of a pioneer or primary invention, but also for the patentee of a secondary invention consisting of a combination of old ingredients which produce new and useful results, *Imhaeuser v. Buerk*, 101 U.S. 647, 655, 25 L.Ed. 945, although the area of equivalence may vary under the circumstances. See *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 414-415, 28 S.Ct 748, 749, 52, L.Ed. 33; *Gould v. Rees*, 15 Wall. 187, 192, 21 L.Ed. 39. The wholesome realism of this doctrine is not always applied in favor of a patentee but is sometimes used against him. Thus, where a device is so far changed in principle from a patented article that it performs the same or a similar function in a

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Cases Citing Displayed Text:

6) Hughes 717 F.2d 1351, P51

6) Hughes 717 F.2d 1351, P65

6) Perkin-Elmer 822 F.2d 1528, P54

6) Perkin-Elmer 822 F.2d 1528, P80

6) Perkin-Elmer 822 F.2d 1528, P89

6) Pennwalt 833 F.2d 931, P19

6) Pennwalt 833 F.2d 931, P43

6) Pennwalt 833 F.2d 931, P67

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Figure 5d

Cite To Search For:

1

Search

Pennwalt Corp. v. Durand-Wayland, Inc., (C.A. Fed. (Ga.) 1987)

[P19] Under the doctrine of equivalents, infringement may be found (but not necessarily (FN1)) if an accused device performs substantially the same overall function or work, in substantially the same way, to obtain substantially the same overall result as the claimed invention. Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 901-02, 221 USPQ 669, 679 (Fed. Cir.), cert denied, 469 U.S. 857, 105 S.Ct 187, 83 L.Ed.2d 120 (1984); Graver Tank, 339 U.S. at 608, 70 S.Ct at 856. That formulation, however, does not mean one can ignore claim limitations. As this court recently stated in Perkin-Elmer Corp. v. Westinghouse Elec. Corp., 822 F.2d 1528, 3 USPQ2d 1321 (Fed. Cir. 1987)

One must start with the claim, and though a "non-pioneer" invention may be entitled to some range of equivalents, a court may not, under the guise of applying the doctrine of equivalents, erase a plethora of meaningful structural and functional limitations of the claim on which the public is entitled to rely in avoiding infringement... Though the doctrine of equivalents is designed to do equity, and to relieve an inventor from a semantic strait jacket when equity requires, it is not designed to permit wholesale redrafting of a claim to cover non-equivalent devices, i.e., to permit a claim expansion that would encompass more than an insubstantial change. (Citations omitted.)

...[I]n applying the doctrine of equivalents, each limitation must be viewed in the context of the entire claim.... "It is ... well settled that

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Pennwalt 833 F.2d 93

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18) London 946 F.2d 1534, P12

19) Wilson 904 F.2d 677, P36

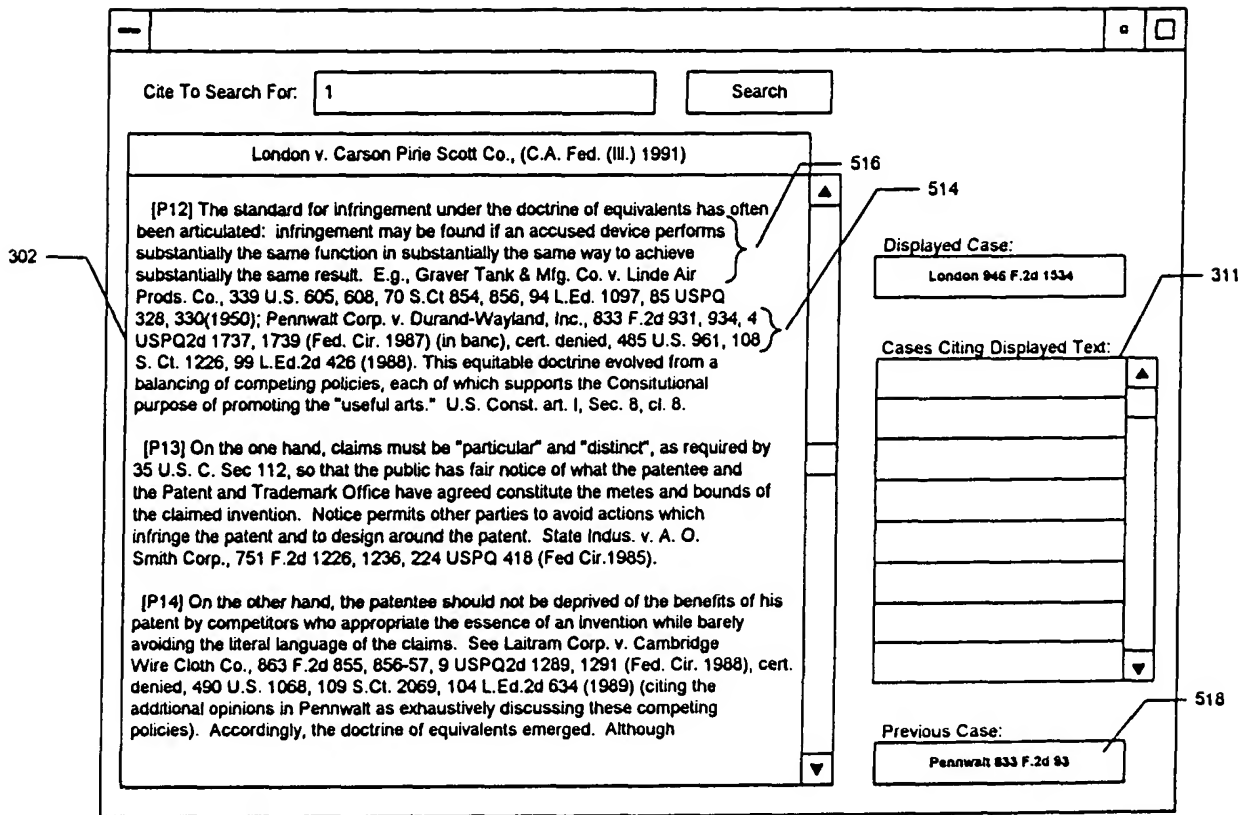
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Graver 70 S.Ct 854

**Figure 5e**



**Figure 5f**

Cite To Search For:

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Search

Pennwalt Corp. v. Durand-Wayland, Inc., (C.A. Fed. (Ga.) 1987)

[P19] Under the doctrine of equivalents, infringement may be found (but not necessarily (FN1)) if an accused device performs substantially the same overall function or work, in substantially the same way, to obtain substantially the same overall result as the claimed invention. Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 901-02, 221 USPQ 669, 679 (Fed. Cir.), cert. denied, 469 U.S. 857, 105 S.Ct. 187, 83 L.Ed.2d 120 (1984); Graver Tank, 339 U.S. at 608, 70 S.Ct. at 856. That formulation, however, does not mean one can ignore claim limitations. As this court recently stated in Perkin-Elmer Corp. v. Westinghouse Elec. Corp., 822 F.2d 1528, 3 USPQ2d 1321 (Fed. Cir. 1987):

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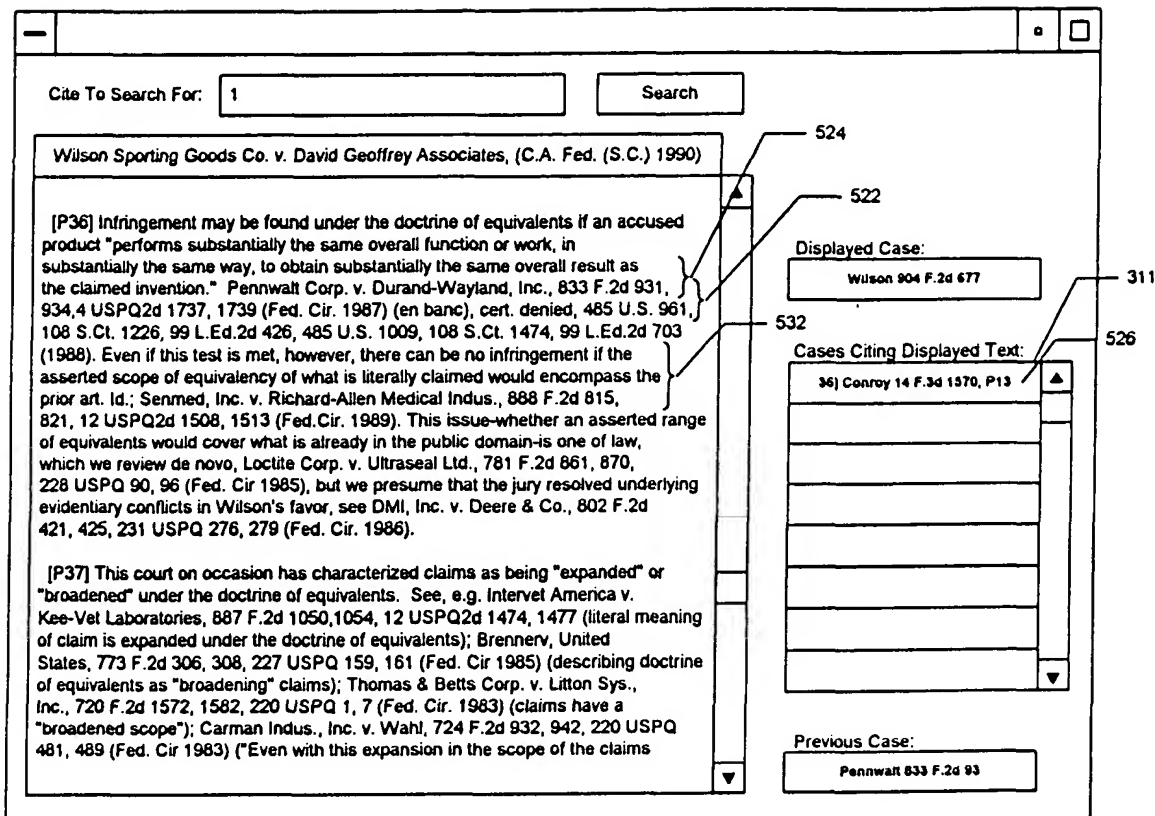
19) Wilson 904 F.2d 677, P36

Previous Case:

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Figure 5g





**Figure 5h**

Cite To Search For:

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Search

Conroy v. Reebok Intern., Ltd., (C.A. Fed. (Mass.) 1994)

[P13] Based entirely on the drawings and the side portions disclosure in the specification, the district court found that the Rudy patent disclosed "tabs (side [portions]) attached to the sole of the boot [claimed in the Rudy patent]." Conroy, 1993 WL 405-479, 27 USPQ2d at 1797. Relying on its finding that the tabs in the accused PUMP shoe were disclosed in the prior art, the district court concluded that Mr. Conroy "[could] not assert [a] range of equivalents, as a matter of law" that would encompass the tabs in the Reebok shoe. Id. (emphasis added) (citing Wilson Sporting Goods Co. v. David Geoffrey & Assocs., 904 F.2d 677, 14 USPQ2d 1942 (Fed. Cir.), cert. denied, 498 U.S. 992, 111 S. Ct. 537, 112 L.Ed.2d 547 (1990); Kay Mfg. Group, Inc. v. Microdot, Inc., 925 F.2d 1444, 17 USPQ2d 1806 (Fed. Cir. 1991)). The district court thus entered summary judgment of noninfringement for Reebok.

III

[P14] This court reviews de novo a district court's grant of summary judgement. International Visual Corp. v. Crown Metal Mfg. Co., 991 F.2d 768, 770, 26 USPQ2d 1588, 1590 (Fed. Cir. 1993). A summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The grant of summary judgment is appropriate in a patent case where the standards set forth in Rule 56(c) are satisfied. Paragon Podiatry Lab., Inc. v. KLM Labs., 984 F.2d 1182, 1190, 25 USPQ2d 1561, 1567 (Fed. Cir. 1993). The moving party bears the

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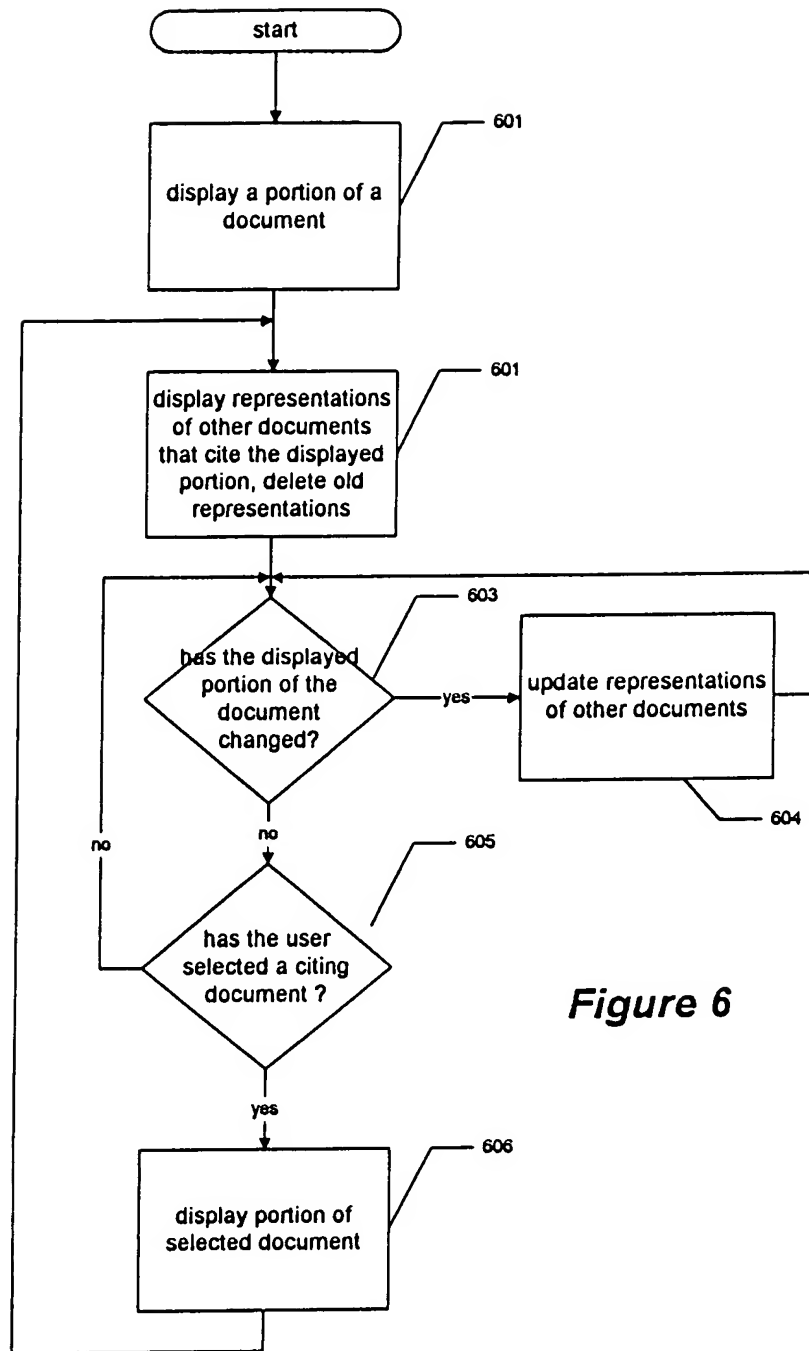
Conroy 14 F.3d 1570

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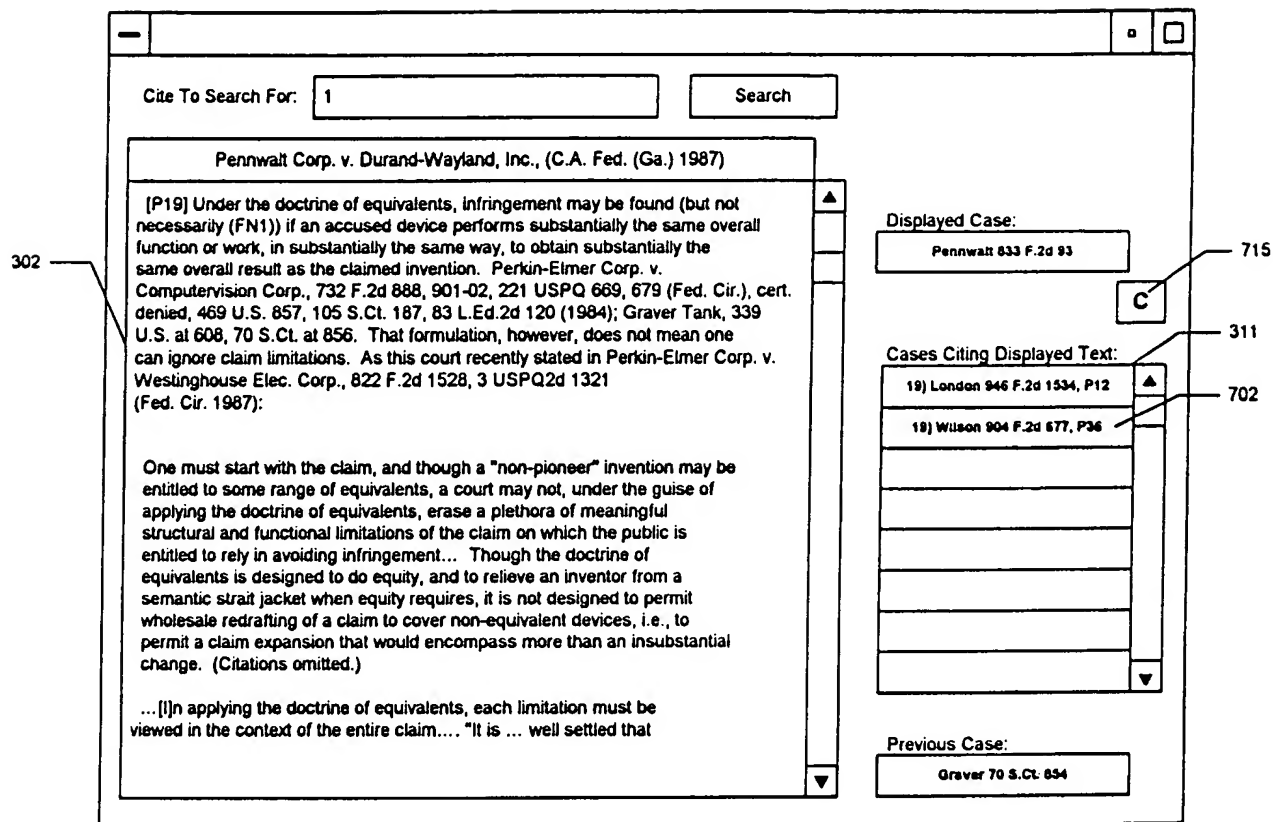
Previous Case:

Wilson 904 F.2d 677

**Figure 5i**



**Figure 6**



**Figure 7a**

Cite To Search For:

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Search

London v. Carson Pirie Scott Co., (C.A. Fed. (Ill.) 1991)

[P12] The standard for infringement under the doctrine of equivalents has often been articulated: infringement may be found if an accused device performs substantially the same function in substantially the same way to achieve substantially the same result. E.g., Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 339 U.S. 605, 608, 70 S.Ct 854, 856, 94 L.Ed. 1097, 85 USPQ 328, 330(1950); Pennwalt Corp. v. Durand-Wayland, Inc., 833 F.2d 931, 934, 4 USPQ2d 1737, 1739 (Fed. Cir. 1987) (in banc), cert. denied, 485 U.S. 961, 108 S. Ct. 1226, 99 L.Ed.2d 426 (1988). This equitable doctrine evolved from a balancing of competing policies, each of which supports the Constitutional purpose of promoting the "useful arts." U.S. Const. art. I, Sec. 8, cl. 8.

[P13] On the one hand, claims must be "particular" and "distinct", as required by 35 U.S. C. Sec 112, so that the public has fair notice of what the patentee and the Patent and Trademark Office have agreed constitute the metes and bounds of the claimed invention. Notice permits other parties to avoid actions which infringe the patent and to design around the patent. State Indus. v. A. O. Smith Corp., 751 F.2d 1226, 1236, 224 USPQ 418 (Fed Cir.1985).

[P14] On the other hand, the patentee should not be deprived of the benefits of his patent by competitors who appropriate the essence of an invention while barely avoiding the literal language of the claims. See Laitram Corp. v. Cambridge Wire Cloth Co., 863 F.2d 855, 856-57, 9 USPQ2d 1289, 1291 (Fed. Cir. 1988), cert. denied, 490 U.S. 1068, 109 S.Ct. 2069, 104 L.Ed.2d 634 (1989) (citing the additional opinions in Pennwalt as exhaustively discussing these competing policies). Accordingly, the doctrine of equivalents emerged. Although

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London 946 F.2d 1534

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Cases Citing Displayed Text:

\* London 946 F.2d 1534, P12

Wilson 904 F.2d 677, P36

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Pennwalt 833 F.2d 93

Figure 7b

Cite To Search For:

**Wilson Sporting Goods Co. v. David Geoffrey Associates, (C.A. Fed. (S.C.) 1990)**

[P36] Infringement may be found under the doctrine of equivalents if an accused product "performs substantially the same overall function or work, in substantially the same way, to obtain substantially the same overall result as the claimed invention." *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 934, 4 USPQ2d 1737, 1739 (Fed. Cir. 1987) (en banc), cert. denied, 485 U.S. 961, 108 S.Ct. 1226, 99 L.Ed.2d 426, 485 U.S. 1009, 108 S.Ct. 1474, 99 L.Ed.2d 703 (1988). Even if this test is met, however, there can be no infringement if the asserted scope of equivalency of what is literally claimed would encompass the prior art. *Id.*; *Senmed, Inc. v. Richard-Allen Medical Indus.*, 888 F.2d 815, 821, 12 USPQ2d 1508, 1513 (Fed.Cir. 1989). This issue-whether an asserted range of equivalents would cover what is already in the public domain-is one of law, which we review de novo. *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 870, 228 USPQ 90, 96 (Fed. Cir 1985), but we presume that the jury resolved underlying evidentiary conflicts in Wilson's favor, see *DML, Inc. v. Deere & Co.*, 802 F.2d 421, 425, 231 USPQ 276, 279 (Fed. Cir. 1986).

[P37] This court on occasion has characterized claims as being "expanded" or "broadened" under the doctrine of equivalents. See, e.g. *Intervet America v. Kee-Vet Laboratories*, 887 F.2d 1050, 1054, 12 USPQ2d 1474, 1477 (literal meaning of claim is expanded under the doctrine of equivalents); *Brennerv, United States*, 773 F.2d 306, 308, 227 USPQ 159, 161 (Fed. Cir 1985) (describing doctrine of equivalents as "broadening" claims); *Thomas & Betts Corp. v. Litton Sys., Inc.*, 720 F.2d 1572, 1582, 220 USPQ 1, 7 (Fed. Cir. 1983) (claims have a "broadened scope"); *Carman Indus., Inc. v. Wahl*, 724 F.2d 932, 942, 220 USPQ 481, 489 (Fed. Cir 1983) ("Even with this expansion in the scope of the claims

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36] Conroy 14 F.3d 1570, P13
* London 946 F.2d 1534, P12
* Wilson 904 F.2d 677, P36

**Previous Case:**

**Figure 7c**

Cite To Search For:

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Search

Conroy v. Reebok Intern., Ltd., (C.A. Fed. (Mass.) 1994)

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Conroy 14 F.3d 1370, P13

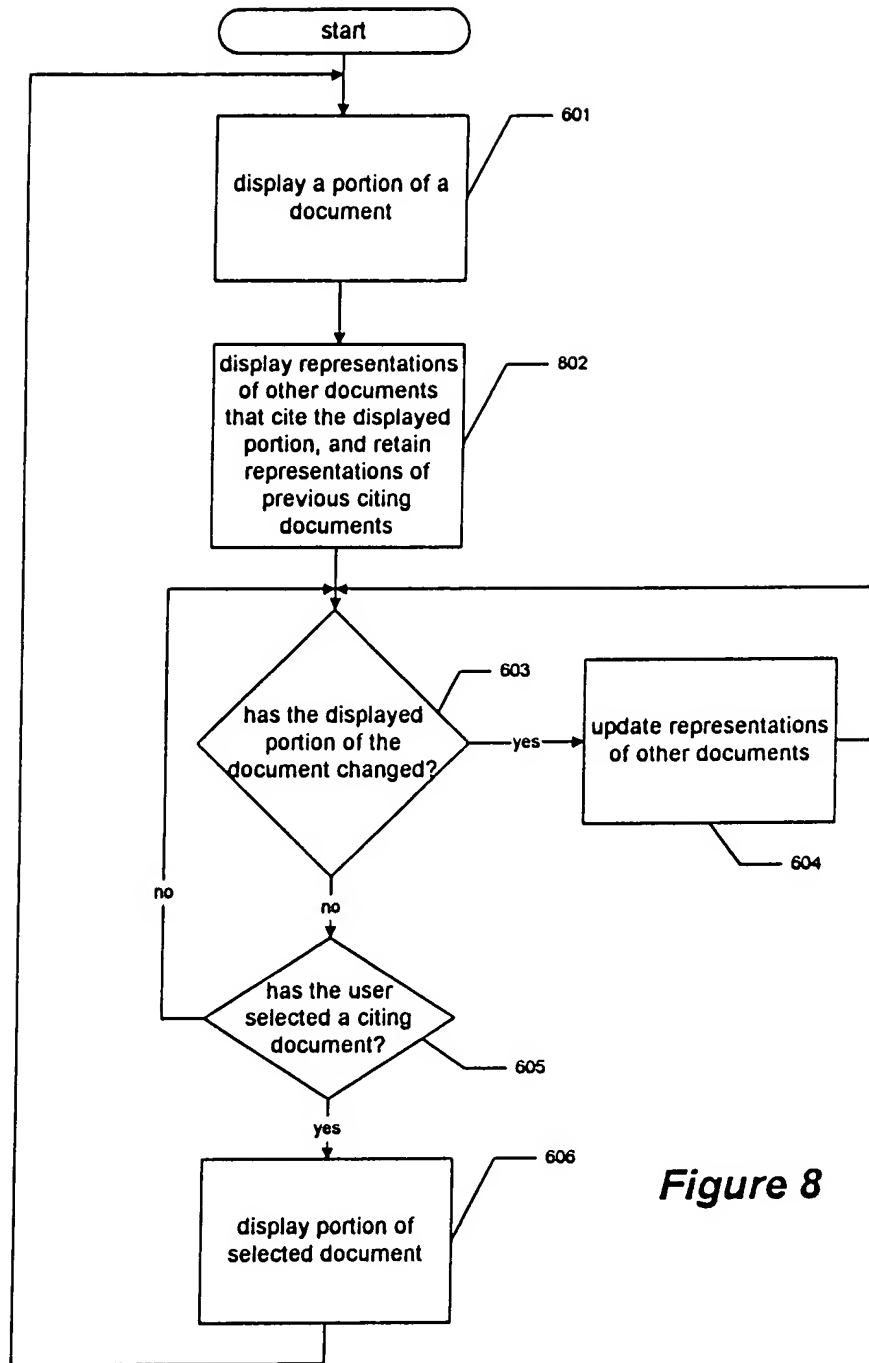
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Wilson 904 F.2d 677

Figure 7d



**Figure 8**



Cite To Search For:

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Search

Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

GRAVER TANK & MFG.CO., Inc., et al.

v.

LINDE AIR PRODUCTS CO.

No. 2

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See 70 S.Ct. 1017.

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[P1] Mr. John T. Cahill, New York City, Richard R. Wolfe, Chicago, ILL, for respondent.

Mr. Justice JACKSON delivered the opinion of the Court.

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Graver 70 S.Ct. 834

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**Figure 9a**

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Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

respondent.

Mr. Justice JACKSON delivered the opinion of the Court.

[P2] Linde Air Products Co., owner of the Jones patent for an electric welding process and for fluxes to be used therewith, brought an action for infringement against Lincoln and the two Graver companies. The trial court held four flux claims valid and infringed and certain other flux claims and all process claims invalid. 86 F.Supp. 191. The Court of Appeals affirmed findings of validity and infringement as to the four flux claims but reversed the trial court and held valid the process claims and the remaining contested flux claims. 167 F.2d 531. We granted certiorari, 335 U.S. 810, 69 S.Ct. 50, 93 L.Ed. 366, and reversed the judgment of the Court of Appeals insofar as it reversed that of the trial court, and reinstated the District Court decree. 336 U.S. 271, 69 S.Ct. 535, 93 L.Ed 672. Rehearing was granted, limited to the question of infringement of the four valid flux claims and in the applicability of the doctrine of equivalents in findings of fact in this case. 337 U.S. 910, 69 S.Ct. 1046, 93 L.Ed. 1722.

[P3] [339 U.S. 607] At the outset it should be noted that the single issue before us is whether the trial court's holding that the four flux claims have been infringed will be sustained. Any issues as to the validity of these claims was unanimously determined by the previous decision in this Court and attack on their validity cannot be renewed now by reason of limitation on grant of rehearing. The disclosure, the claims, and the prior art have been adequately

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**Figure 9b**

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Search

Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

trial court, and reinstated the District Court decree. 336 U.S. 271, 69 S.Ct. 535, 93 L.Ed 672. Rehearing was granted, limited to the question of infringement of the four valid flux claims and in the applicability of the doctrine of equivalents in findings of fact in this case. 337 U.S. 910, 69 S.Ct. 1046, 93 L.Ed. 1722.

[P3] [339 U.S. 607] At the outset it should be noted that the single issue before us is whether the trial court's holding that the four flux claims have been infringed will be sustained. Any issues as to the validity of these claims was unanimously determined by the previous decision in this Court and attack on their validity cannot be renewed now by reason of limitation on grant of rehearing. The disclosure, the claims, and the prior art have been adequately described in our former opinion and in the opinions of the courts below.

[P4] In determining whether as accused device or composition infringes a valid patent, resort must be had in the first instance to the words of the claim. If accused matter falls clearly within the claim, infringement is made out and that is the end of it.

[P5] But courts have also recognized that to permit imitation of a patented invention which does not copy every literal detail would be to convert the protection of the patent grant into a hollow and useless thing. Such a limitation would leave room for indeed encourage the unscrupulous copyist to make unimportant and insubstantial changes and substitutions in the patent

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Cases Citing Displayed Text:

4) Pennwalt 833 F.2d 931, P13

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Pennwalt 833 F.2d 931, P13

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**Figure 9c**

Cite To Search For:

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Search

Pennwalt Corp. v. Durand-Wayland, Inc., (C.A. Fed. (Ga.) 1987)

[P13] Pennwalt asserts on appeal that all limitations set forth in claims 1 and 2 and some limitations set forth in claims 10 and 18 can be read literally on the accused devices. Pennwalt contends that the district court erred in interpreting the claims by going beyond the means-plus-function language of a claim limitation and comparing the structure in the accused devices with the structure disclosed in the specification. Such comparison allegedly resulted in the court's reading nonexistent structural limitations into the claims. Pennwalt relies on the statement in Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 339 U.S. 605, 607, 70 S.Ct 854, 855, 94 L.Ed. 1097 (1950): "If accused matter falls clearly within the claim, infringement is made out and that is the end of it." In view of the literal breadth of means-plus-function language in the claims, that "test" for literal infringement would encompass any means that performed the function of a claim element. 35 U.S.C. Sec. 112 (1982). This is not the "test." The Graver Tank statement predated the inclusion in the 1952 paragraph 6. See P. Federico, Commentary on the New Patent Law, 35 USCA 1, 25 (1954). As Judge Rich, one of the drafters of the statute, stated in a 1952 address explaining the import of section 112, paragraph 6:

If you adapt this practice, that element or step is to be construed-shall be construed (it is mandatory)-to cover the corresponding structure, material or acts described in the specification and equivalents thereof.

[P14] Address before the New York Patent Law Association (November 6, 1952), reprinted in R. Calvert, The Encyclopedia of Patent Practice and Invention

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Pennwalt 833 F.2d 931

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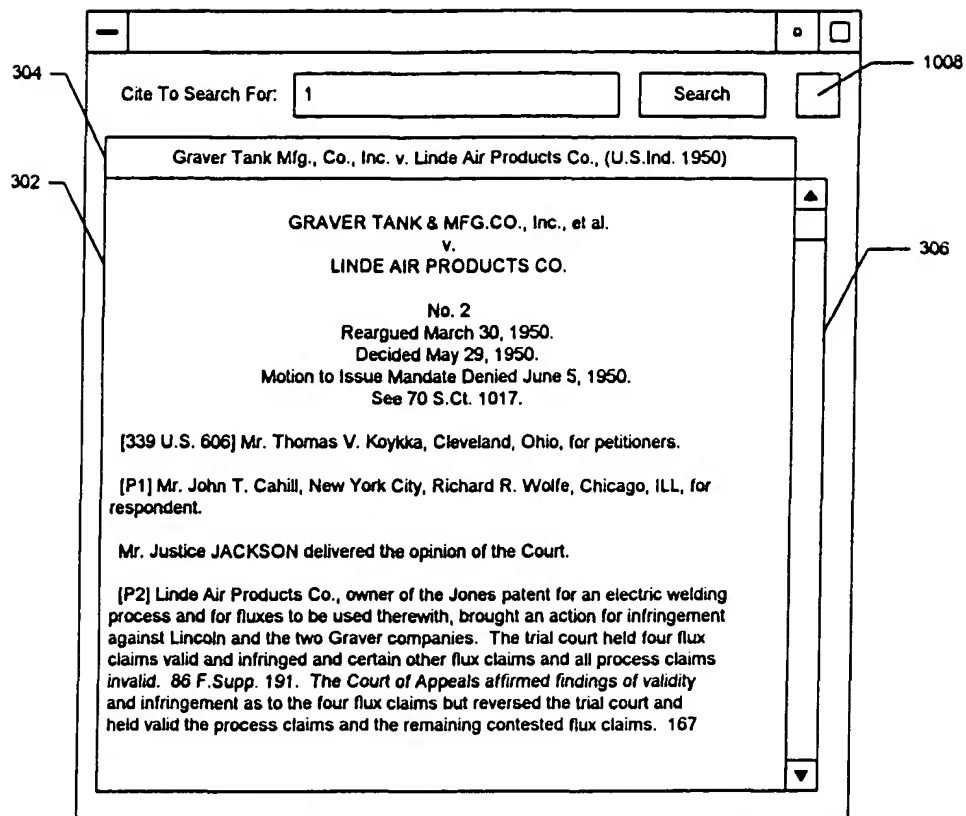
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\* Pennwalt 833 F.2d 931, P13

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**Figure 9d**



**Figure 10a**

1001

Displayed Case:

Graver Tank 70 S.Ct. 1017

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Cases Citing Displayed Text:

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**Figure 10b**

1008

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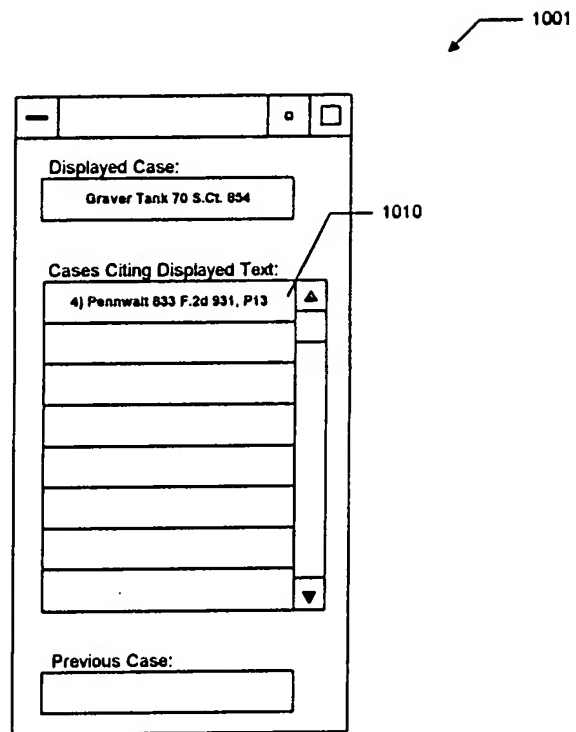
Graver Tank Mfg., Co., Inc. v. Linde Air Products Co., (U.S.Ind. 1950)

[P2] Linde Air Products Co., owner of the Jones patent for an electric welding process and for fluxes to be used therewith, brought an action for infringement against Lincoln and the two Graver companies. The trial court held four flux claims valid and infringed and certain other flux claims and all process claims invalid. 86 F.Supp. 191. The Court of Appeals affirmed findings of validity and infringement as to the four flux claims but reversed the trial court and held valid the process claims and the remaining contested flux claims. 167 F.2d 531. We granted certiorari, 335 U.S. 810, 69 S.Ct. 50, 93 L.Ed. 366, and reversed the judgment of the Court of Appeals insofar as it reversed that of the trial court, and reinstated the District Court decree. 336 U.S. 271, 69 S.Ct. 535, 93 L.Ed. 672. Rehearing was granted, limited to the question of infringement of the four valid flux claims and to the applicability of the doctrine of equivalents to findings of fact in this case. 337 U.S. 910, 69 S.Ct. 1046, 93 L.Ed. 1722.

[P3] [339 U.S. 607] At the outset it should be noted that the single issue before us is whether the trial court's holding that the four flux claims have been infringed will be sustained. Any issues as to the validity of these claims was unanimously determined by the previous decision in this Court and attack on their validity cannot be renewed now by reason of limitation on grant of rehearing. The disclosure, the claims, and the prior art have been adequately described in our former opinion and in the opinions of the courts below.

[P4] In determining whether an accused device or composition infringes a valid

**Figure 10c**



**Figure 10d**

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□
□

Cite To Search For: 

1008

Pennwalt Corp. v. Durand-Wayland, Inc., (C.A. Fed. (Ga.) 1987)

[P13] Pennwalt asserts on appeal that all limitations set forth in claims 1 and 2 and some limitations set forth in claims 10 and 18 can be read literally on the accused devices. Pennwalt contends that the district court erred in interpreting the claims by going beyond the means-plus-function language of a claim limitation and comparing the structure in the accused devices with the structure disclosed in the specification. Such comparison allegedly resulted in the court's reading nonexistent structural limitations into the claims. Pennwalt relies on the statement in *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 607, 70 S.Ct 854, 855, 94 L.Ed. 1097 (1950): "If accused matter falls clearly within the claim, infringement is made out and that is the end of it." In view of the literal breadth of means-plus-function language in the claims, that "test" for literal infringement would encompass any means that performed the function of a claim element. 35 U.S.C. Sec. 112 (1982). This is not the "test." The Graver Tank statement predated the inclusion in the 1952 paragraph 6. See P. Federico, Commentary on the New Patent Law, 35 USCA 1, 25 (1954). As Judge Rich, one of the drafters of the statute in a 1952 address explaining the import of section 112, paragraph 6:

If you adopt this practice, that element or step is to be construed-shall be construed (it is mandatory)-to cover the corresponding structure, material or acts described in the specification and equivalents thereof.

[P14] Address before the New York Patent Law Association (November 6, 1952), reprinted in R. Calvert, *The Encyclopedia of Patent Practice and Invention*

**Figure 10e**

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□
□

**Displayed Case:**  

Wilson 904 F.2d 677

**Cases Citing Displayed Text:**  

26) Conroy 14 F.3d 1576, P13

**Citing Cases Bin:**  

\* London 946 F.2d 1534, P12  
\* Wilson 904 F.2d 677, P36

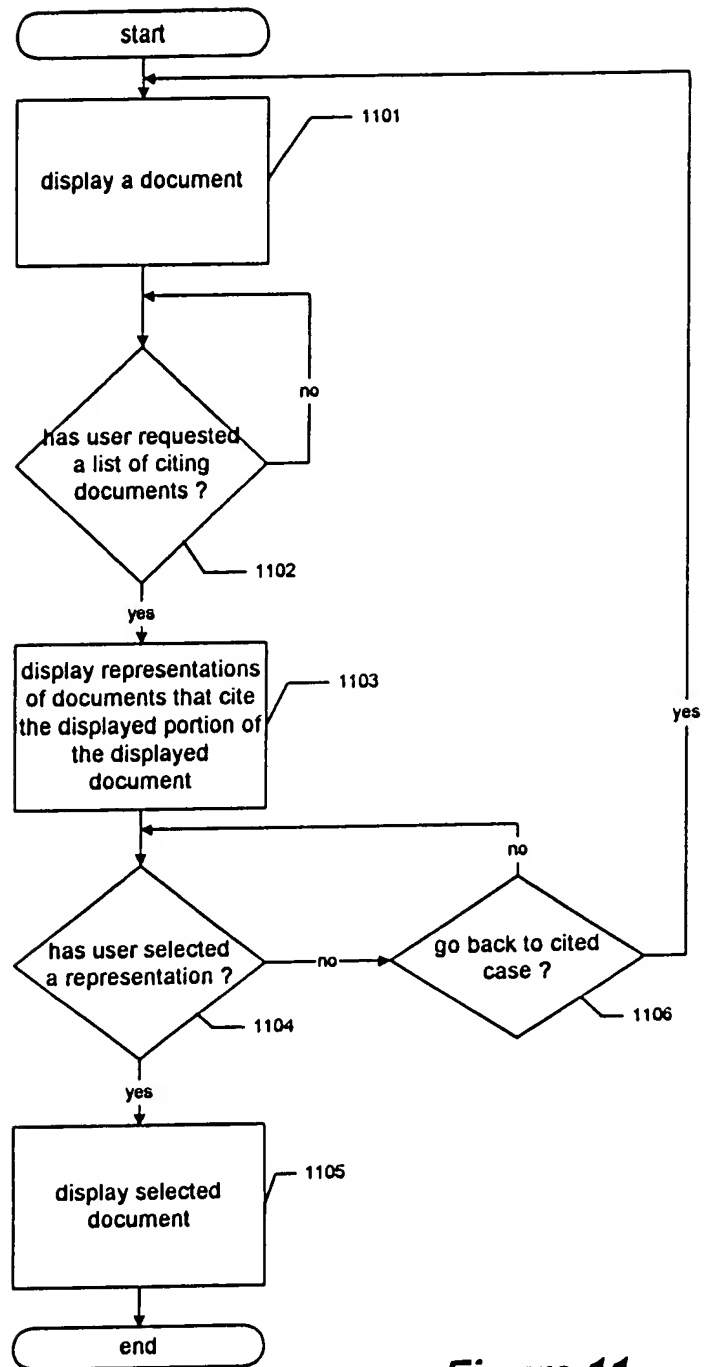
**Previous Case:**  

London 946 F.2d 1534

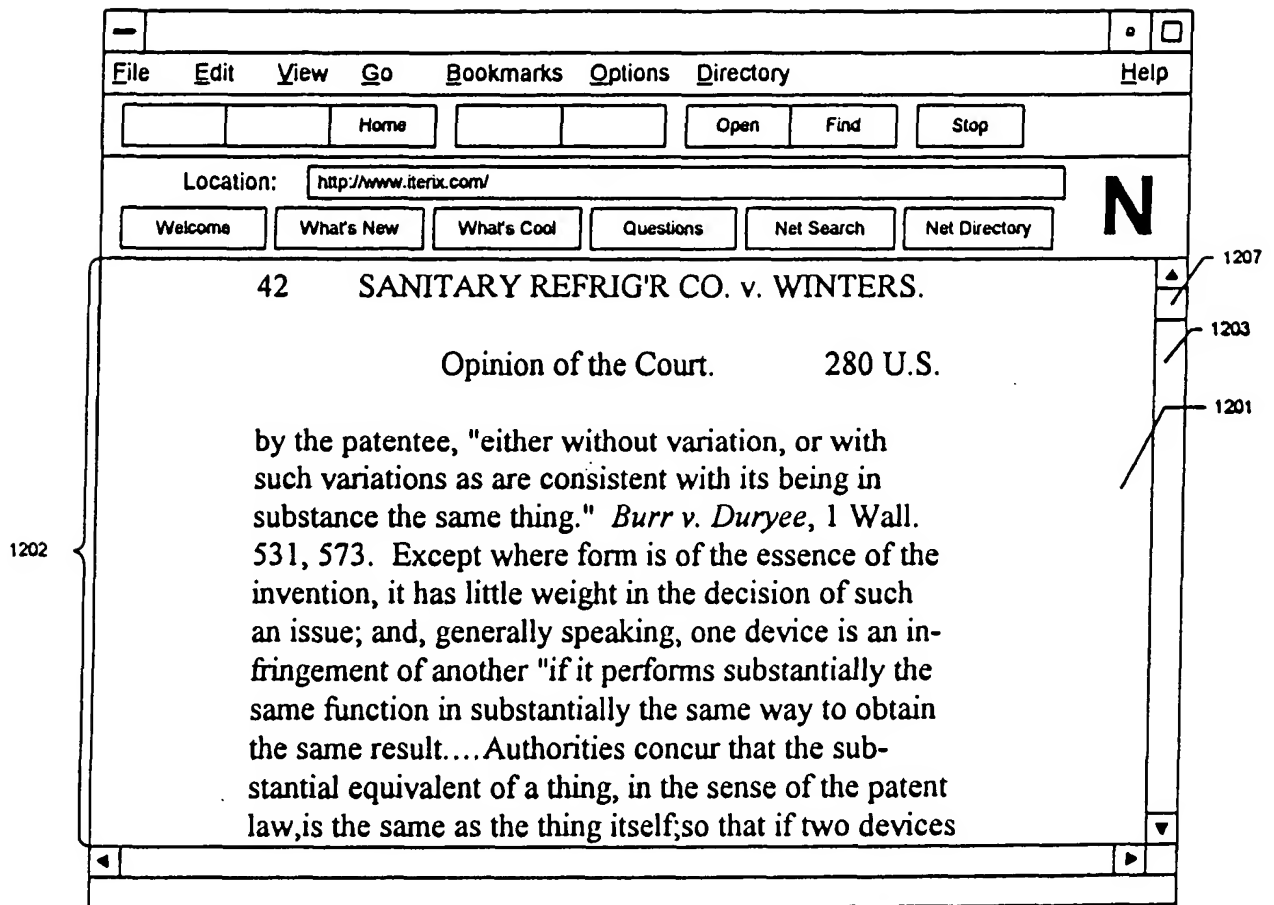
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**Figure 10f**

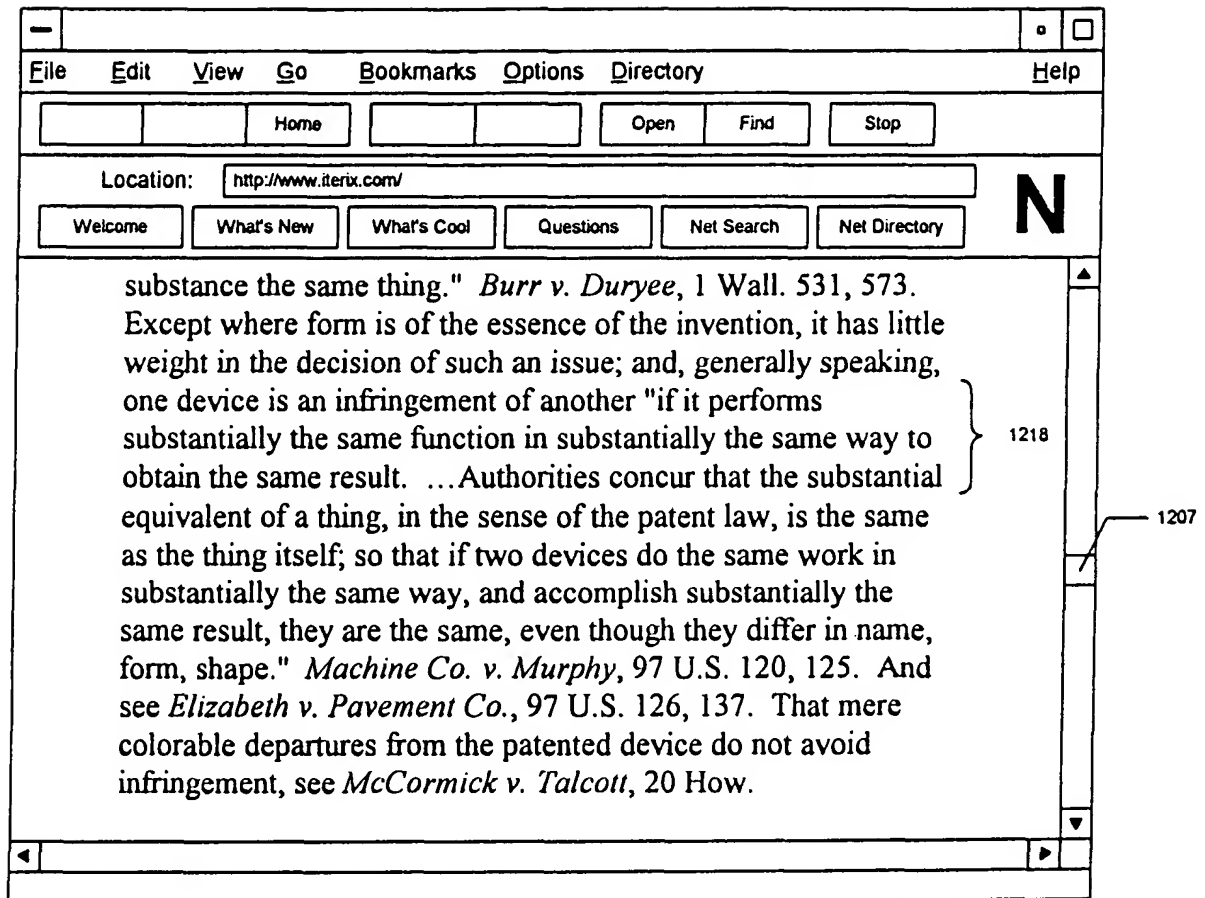




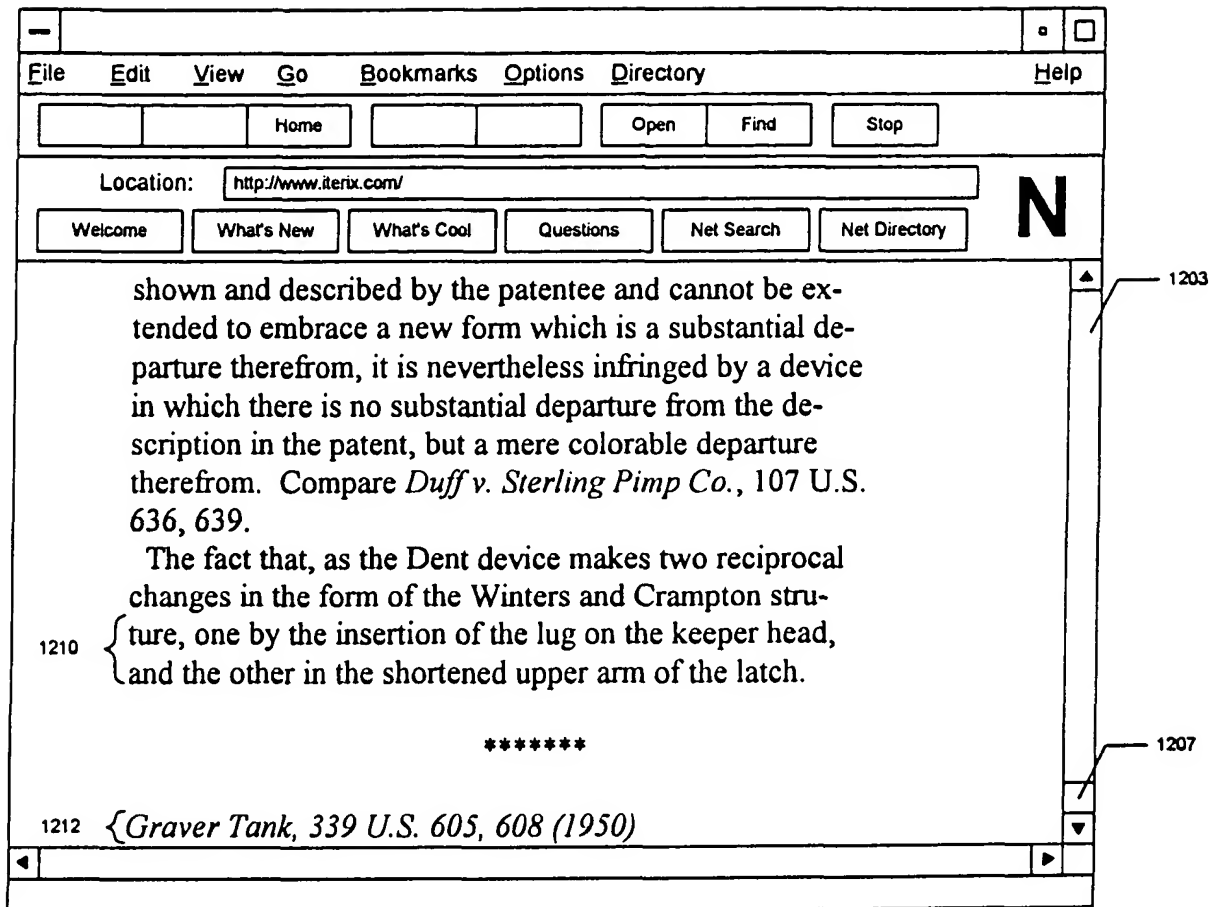
**Figure 11**



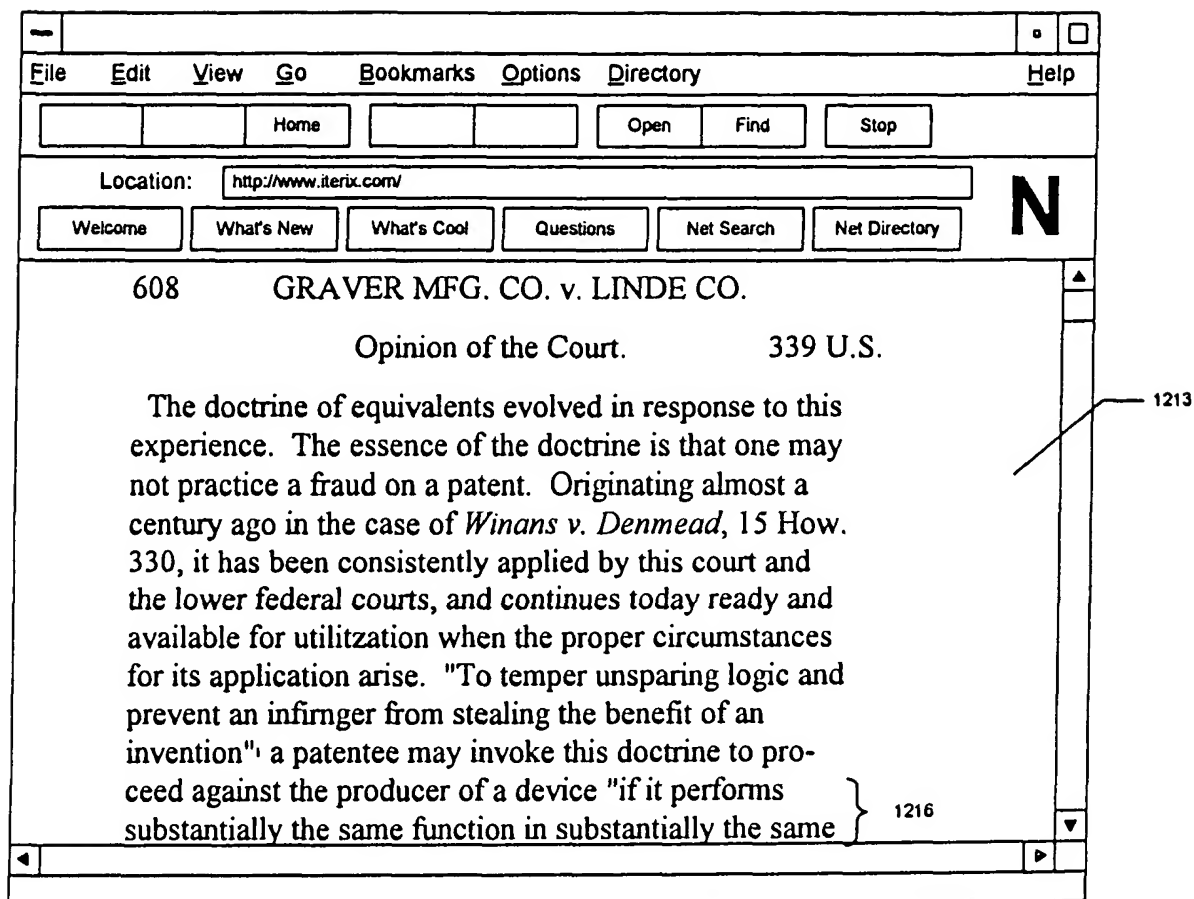
**Figure 12a**



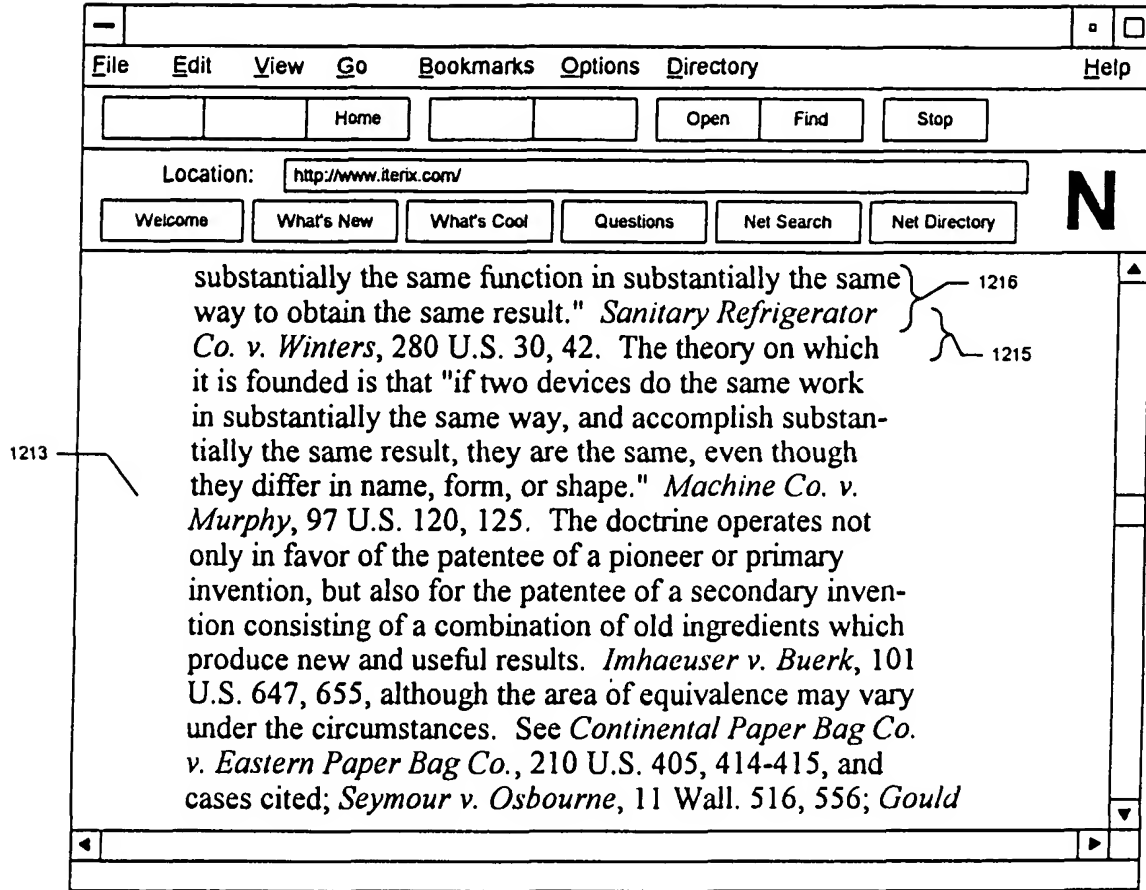
**Figure 12b**



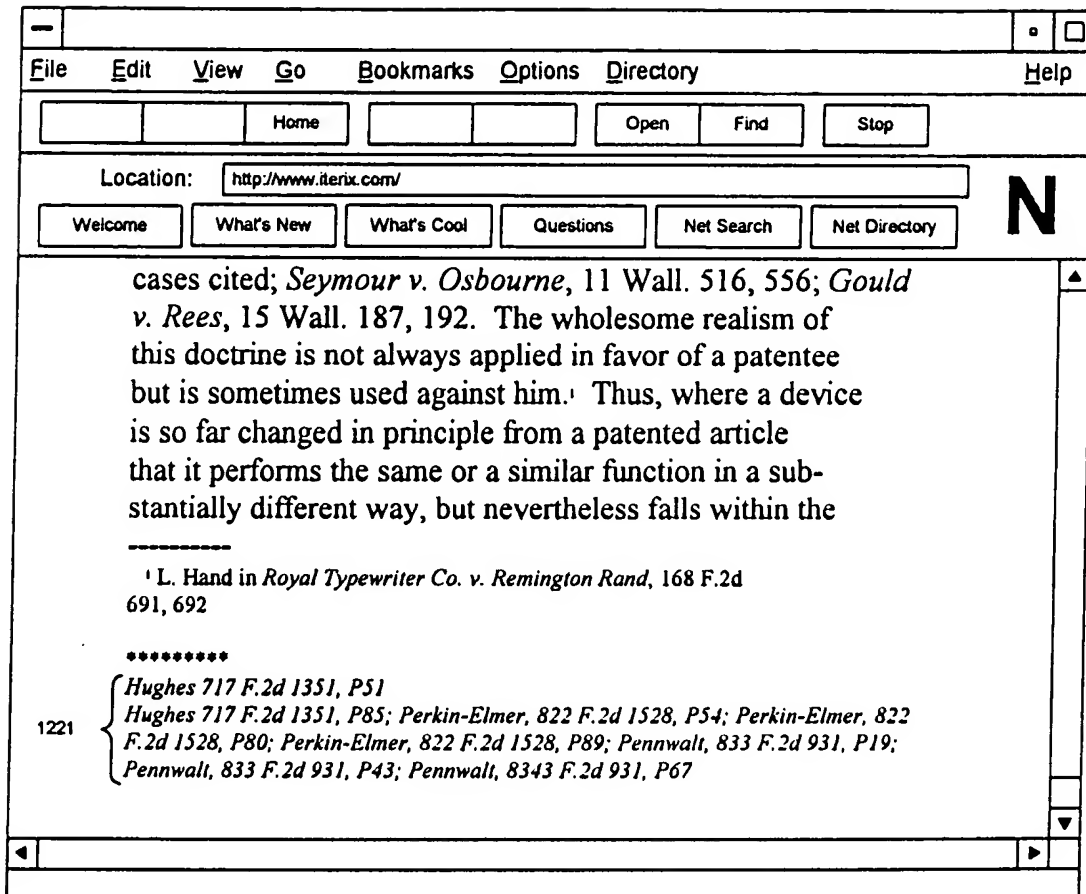
**Figure 12c**



**Figure 12d**



**Figure 12e**



**Figure 12f**